

TITLE 11
DEPARTMENT OF HEALTH
CHAPTER 30
FROZEN DESSERTS

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Historical Note: Chapter 30 of Title 11, Administrative Rules, is based substantially upon Chapter 25, Public Health Regulations, Department of Health, State of Hawaii, entitled "Frozen Desserts." [Eff. 8/10/49; am 3/15/50; am 9/10/50; am 5/12/64, am and ren 8/14/73; R Oct. 2, 1981]

§11-30-1 Purpose.

The purpose of this chapter is to establish standards of identity and quality and sanitary requirements for frozen desserts. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: §§321-11, 328-8, 328-19.1, 328-21)

§11-30-2 Definitions.

As used in this chapter:

"Class" of frozen desserts includes all frozen desserts which conform to one of the standards of identity for frozen desserts established by this chapter.

"Counter Freezer" means equipment operated by a retail establishment to manufacture frozen dessert from frozen dessert mix.

"Department" means department of health of the State of Hawaii.

"Director" means director of health of the department, or his duly authorized representative.

"Frozen dessert" means any clean frozen or partially frozen combination of two or more of milk or milk products, eggs or egg products, sugar, water, fruit or fruit juice, candy, nut meats, or other harmless and wholesome food products, flavors, color or harmless stabilizer, and shall be deemed to include ice cream, frozen custard, ice milk, fruit sherbets, water ices, nonfruit sherbets, nonfruit water ices, quiescent frozen confections, shave ice, frozen yogurt, non-conforming frozen desserts, and imitation frozen desserts.

"Frozen desserts manufacturer" means any person who manufactures, processes, or freezes any mix or frozen dessert for distribution or sale.

"Frozen desserts plant" means any place or premises where frozen desserts or mix are manufactured, processed, or frozen for distribution or sale.

"Milk products plant" means any place or premises where milk or milk products are skimmed, condensed, evaporated, powdered, manufactured into butter or otherwise processed for subsequent manufacture for sale of mix or frozen desserts.

"Pasteurization" refers to the process of heating every particle of mix in properly operated equipment to one of the temperatures specified in the table in this section and held continuously at or above that temperature for the specified time (or other time/temperature relationship which has been demonstrated to be equivalent thereto in microbial destruction):

Temperature	Time
155°F	30 min.
175°F	25 sec.

"Retail establishment" includes restaurants, soda fountains, drive-ins, lunchwagons and similar public eating places.

"Safe and suitable" means that an ingredient:

- (1) Performs an appropriate function in the food in which it is used.
- (2) Is used at a level no higher than necessary to achieve its intended purpose in that food.
- (3) Is a food additive or color additive as defined in §328-1(10) or §328-1(11), HRS, and is used in conformity with regulations established pursuant to §409 (relating to food additives) or §706 (relating to listing and certification of color additives) of the Federal Food, Drug, and Cosmetic Act. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-21) (Imp: HRS §§321-11, 328-8, 328-21)

§11-30-3 Ice cream and frozen custard.

(a) These products shall be made as follows:

(1) Ice cream is a product produced by freezing, while stirring pasteurized mix consisting of one or more of the optional dairy ingredients as specified in §11-30-3(b) and may contain one more of the optional caseinates as specified in §11-30-3(c) subject to the conditions hereinafter set forth, and other safe and suitable nonmilk derivatives. Other food fats shall be excluded, except when the fats are natural components of flavoring ingredients used or are added in incidental amounts to accomplish specific functions. Ice cream is sweetened with nutritive carbohydrate sweeteners and may or may not be characterized by the addition of flavoring ingredients. Water may be added, or water may be evaporated from the mix.

(2) Ice cream contains not less than 1.6 pounds of total solids per gallon, and weighs not less than 4.5 pounds per gallon. Ice cream contains not less than ten per cent milkfat, nor less than twenty per cent total milk solids. In no case shall the content of nonfat milk solids be less than six per cent. When one or more bulky flavors are added to ice cream, the finished ice cream shall contain not less than eight per cent by weight of milkfat and sixteen per cent by weight of total milk solids. When the weight of the bulky flavors are subtracted from the weight of the finished ice cream, the remaining ice cream shall contain not less than ten per cent by weight of milkfat and twenty per cent by weight of total milk solids. Ice cream shall contain less than 1.4 per cent by weight of egg yolk solids, exclusive of the weight of any bulky flavoring ingredients used. Frozen custard shall contain not less than 1.4 per cent by weight of egg yolk solids. However, when bulky flavors are added to frozen custard, the egg yolk solids content may be reduced in proportion to the amount by weight of the bulky flavors added; provided, that in no case shall the content of egg yolk solids in the finished frozen custard be less than 1.12 per cent.

(3) When calculating the minimum amount of milkfat and total milk solids required in the finished product, the solids of chocolate or cocoa used shall be considered as bulky flavoring ingredients. In order to make an allowance for any additional sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate or cocoa solids used may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by 1.4. The resulting values may be used to represent the weights of the bulky ingredients when additional sweetening ingredients are required. When the appropriate values are subtracted from the weight of the finished ice cream, the remaining ice cream shall contain not less than ten per cent by weight of milkfat and twenty per cent by weight of total milk solids.

(b) The following are optional dairy ingredients: cream, dried cream, plastic cream (concentrated milk fat), butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate, concentrated cheese whey, and dried cheese whey. The sweet cream buttermilk and the concentrated

sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5 per cent, has a titratable acidity of not more than 0.17 per cent, calculated as lactic acid. The term "milk" as used in this section means cow's milk. Any concentrated cheese whey and dried cheese whey used shall contribute not more than 25.0 per cent by weight of the total nonfat milk solids content of the finished food. Dried cheese whey is uniformly light in color, free from brown and black scorched particles, and has an alkalinity of ash, not more than two hundred twenty-five milliliters 0.1N HCl per one hundred grams, a bacterial count of not more than fifty thousand per gram, and, as adjusted with water to a total solids content of 6.5 per cent, a titratable acidity of not more than 0.16 per cent, calculated as lactic acid. Concentrated cheese whey has an alkalinity of ash, not more than one hundred fifteen milliliters 0.1N HCl per one hundred grams, a bacterial count of not more than fifty thousand per gram, and, as adjusted with water to a total solids content of 6.5 per cent, a titratable acidity of not more than 0.18 per cent, calculated as lactic acid. The modified skim milk, when adjusted with water to a total solids content of 9.0 per cent, is substantially free of lactic acid as determined by titration with 0.1N NaOH, and it has a pH value in the range of 8.0 to 8.3.

(c) The following are optional caseinates that may be added to ice cream mix that contains no less than twenty per cent total milk solids: Casein prepared by Precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate, and sodium caseinate. Caseinate may be added in liquid or dry form but must be free of excess alkali.

(d) Fat content shall be determined by the method: "Fat; Roesse-Gottlieb Method-Official Final Action" contained in the 12th Edition, 1975, of the "Official Methods of Analysis of the Association of Official Analytical Chemists."

(e) The name of the product is as follows:

(1) The name of the product is "ice cream." However, when the egg yolk solids content of the product is in excess of that amount specified for ice cream in §11-30-3(a)(2), the name of the product becomes "frozen custard" or "french ice cream" or "french custard ice cream."

(2) (A) If the product contains no artificial flavor, the name on the principal display panel or panels of the label shall be accompanied by the common or usual name of the characterizing flavor; e.g., "vanilla." Lettering shall not be less than one-half the height of the letters used in the words "ice cream."

(B) If the product contains both a natural characterizing flavor and an artificial flavor simulating the natural flavor and if the natural flavor predominates, the name on the principal display panel or panels of the label shall be accompanied by:

(i) The common name of the characterizing flavor, in letters not less than one-half the height of the letters used in the words "ice cream."

(ii) The word "flavored," following the name of the characterizing flavor in letters not less than one-half the height of the letters in the name of the characterizing flavor. For example, "vanilla flavored," or "peach flavored," or "vanilla flavored and strawberry flavored."

(C) If the product contains both a natural characterizing flavor and an artificial flavor simulating the natural flavor and if the artificial flavor predominates, or if artificial flavor is used alone, the name on the principal display panel or panels of the label shall be accompanied by:

- (i) The common name of the characterizing flavor in letters not less than one-half the height of the letters used in the words "ice cream."
- (ii) The words "artificial" or "artificially flavored," preceding the name of the characterizing flavor in letters not less than one-half the height of the letters in the name of the characterizing flavor. For example, "artificial vanilla," or "artificially flavored strawberry," or "artificially flavored vanilla and artificially flavored strawberry."

(3) (A) If the product is subject to the requirements of §11-30-3(e)(2)(B) or if it contains any artificial flavor not simulating the characterizing flavor, the label shall also bear the words "_____artificial flavor added" or "_____artificial flavor added," the blank filled in with the common name of the flavor simulated by the artificial flavor in letters of the same size and prominence as the words that precede and follow it.

(B) Wherever the name of the characterizing flavor appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words prescribed by this paragraph shall immediately and conspicuously precede or follow such name, in a size reasonably related to the prominence of the name of the characterizing flavor. In any event, the size of the type shall not be less than six-point on packages containing less than one pint; not less than eight-point on packages containing at least one pint but less than one-half gallon; not less than ten-point on packages containing at least one-half gallon but less than one gallon; and not less than twelve-point on packages containing one gallon or more. However, where the characterizing flavor and a trademark or brand are presented together, other written, printed, or graphic matter that is a part of or is associated with the trademark or brand, may be inserted in between if the required words are in such relationship with the trademark or brand as to be clearly related to the characterizing flavor; and provided, that if the finished product contains more than one flavor of ice cream subject to the requirements of this paragraph, the statements required by this paragraph need appear only once in each statement of characterizing flavors present in such ice cream, e.g., "vanilla, chocolate, and strawberry flavored, artificial flavors added."

(4) If the product contains both a natural characterizing flavor and an artificial flavor simulating the characterizing flavor, any reference to the natural characterizing flavor shall, except as otherwise authorized by this paragraph, be accompanied by a reference to the artificial flavor, displayed with substantially equal prominence, e.g., "strawberry and artificial strawberry flavor."

(5) An artificial flavor simulating the characterizing flavor shall be deemed to predominate in the following:

- (A) In the case of vanilla beans or vanilla extract used in combination with vanillin if the amount of vanillin used is greater than one ounce per unit of vanilla constituent, as the term is defined in 21 C.F.R. §169.3(c).

(B) In the case of fruit or fruit juice used in combination with artificial fruit flavor, if the quantity of the fruit or fruit juice used is such that, in relation to the weight of the finished ice cream product, the weight of the fruit or fruit juice (including water necessary to reconstitute partially or wholly dried fruits or fruit juices to their original moisture content), is less than two percent in the case of citrus ice cream, six per cent in the case of berry or cherry ice cream, and ten percent in the case of ice cream prepared with other fruits.

(C) In the case of nut meats used in combination with artificial nut flavor, if the quantity of nut meats used is such that, in relation to the finished ice cream, the weight of the nut meats is less than two per cent.

(D) In the case of two or more fruits or fruit juices, or nut meats, or both, used in combination with artificial flavors simulating the natural flavors and dispersed throughout the product if the quantity of any fruit or fruit juices or nut meat is less than one-half the applicable percentage specified in §11-30-3(e)(5)(B) or (C). For example, if a combination ice cream contains less than five per cent bananas and less than one per cent almonds, it would be termed "artificially flavored banana-almond ice cream." However, if it contains more than five per cent bananas and more than one per cent almonds, it would be termed "banana-almond flavored ice cream."

(6) If two or more flavors of ice cream are distinctively combined in one package, e.g., "Neapolitan" ice cream, the applicable provisions of §11-30-3(e) shall govern each flavor of ice cream comprising the combination.

(f) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of 21 C.F.R. Part 101, except that sources of milkfat or nonfat milk solids may be declared in descending order of predominance either by the use of all the terms "milkfat and nonfat milk" when one or any combination of two or more of the ingredients listed in 21 C.F.R. §101.4(b)(3), (4), (8), and (9) are used or alternatively as permitted in 21 C.F.R. §101.4. Pursuant to §328-10(11), HRS, artificial color need not be declared in ice cream. Voluntary declaration of such color in ice cream is recommended. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§321-11, 328-6, 328-8, 328-10, 328-19.1)

§11-30-4 Ice milk.

(a) Ice milk is a product prepared from the same ingredients and in the same manner as prescribed in §11-30-3 relating to ice cream and complies with all of the provisions of §11-30-3 (including the requirements for label statement of optional ingredients), except:

(1) The content of milkfat is more than two per cent but not more than seven per cent.

(2) The content of total milk solids is not less than eleven per cent.

(3) Caseinates may be added when the content of total milk solids is not less than eleven per cent.

(4) The provision for the reduction of milkfat and nonfat milk solids content from the addition of bulky flavors applies as prescribed in §11-30-3(a). However, in no case shall the milkfat content be less than two per cent, nor the nonfat milk solids content be less than seven per cent.

(5) The quantity of food solids per gallon of ice milk is not less than 1.3 pounds.

(6) When any artificial coloring is used in ice milk, directly or as a component of any other ingredient, the label shall bear the statement "artificially colored," "artificial coloring added," "with added artificial color," or " ,_____ an artificial color added," the blank filled in with the common or usual name of the artificial color. In lieu thereof, in case the artificial color is a component of another ingredient, the label shall bear the statement, " _____ artificially colored," the blank filled in with the name of the ingredient.

(7) If both artificial color and artificial flavoring are used, the label statements may be combined.

(b) The name of the product is "ice milk."

(c) Where ice milk is sold at a retail outlet to a consumer in anything other than original packages properly labeled and designed for use by the ultimate consumer, the owner-operator, or manager of such retail establishment shall display, where they may be seen by the purchaser, conspicuous, legible signs, " ice milk" or " an ice milk product: the blank filled in with the brand name of ice milk. Signs, advertisement, or labels referring, or applying such names to ice milk as "frosty," "dairy freeze," "softie freeze," or similar trade names, shall also include the term "ice milk product" in conjunction with such signs, labels or other form of advertising. However, the term "ice milk product" may be omitted when it is clear from such signs, advertisements, or labels that ice milk is being offered for sale.

(d) In food establishments that sell or dispense both ice milk and ice cream, the signs, menu cards, or other forms of display which advertise sundaes, sodas, malted milk beverages, and similar products, shall be taken to mean the use of ice cream, or ice cream mix. The use of frozen desserts or mixes other than ice cream or ice cream mix in such sundaes, sodas, malted milk beverages, and similar products, is prohibited, except when signs, menu cards and other forms of display literature indicate that substitutes are being used in lieu of ice cream or ice cream mix.

(e) All manufacturers or distributors of ice milk or ice milk mix shall upon request of the director submit the names and specific locations of all dealers or other persons who receive ice milk or ice milk mix for the purpose of selling or otherwise dispensing it to the public. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§321-11, 328-6, 328-8, 328-10, 328-19.1)

§11-30-5 Sherbets.

(a) The product shall be made as follows:

(1) Sherbet is a product produced by freezing, while stirring, a pasteurized mix consisting of one or more of the optional dairy ingredients as specified in §11-30-5(b), and may contain one or more of the optional caseinates as specified in §11-30-5(c) subject to the conditions hereinafter set forth, and other safe and suitable nonmilk derivatives. Other food fats shall be excluded, except when the fats are added in small amounts to accomplish specific functions or are natural components of flavoring ingredients used. Water may be added, or water may be evaporated

from the mix. Sherbet is sweetened with nutritive carbohydrate sweeteners and is characterized by the addition of one or more of the characterizing fruit ingredients specified in §11-30-5(d) or one or more of the nonfruit-characterizing ingredients specified in §11-30-5(e).

(2) Sherbet weighs not less than six pounds per gallon. The milkfat content is not less than one per cent, nor more than two percent, the nonfat milk-derived solids content not less than one per cent, and the total milk or milk-derived solids content is not less than two per cent nor more than five per cent by weight of the finished product. Sherbet that is characterized by a fruit ingredient shall have a titratable acidity, calculated as lactic acid, of not less than 0.35 per cent.

(b) The optional dairy ingredients that may be used in sherbets are specified in §11-30-3(b) relating to optional dairy ingredients that may be used in ice cream, except:

(1) No skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate may be used.

(2) The provision that any concentrated cheese whey and dried cheese whey used shall contribute not more than 25.0 per cent by weight of the total nonfat milk solids content of the finished product shall not apply.

(3) The provision for the lactic acid content and pH value of modified skim milk shall not apply.

(c) The following are optional caseinates that may be added to sherbet mix: casein prepared by precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate, and sodium caseinate. Caseinates may be added in liquid or dry form, but must be free of excess alkali. Such caseinates are not considered to be milk solids.

(d) The optional fruit-characterizing ingredients referred to in §11-30-5(a) are any mature fruit or the juice of any mature fruit. The fruit or fruit juice used may be fresh, frozen, canned, concentrated, partially or wholly dried. The fruit may be thickened with pectin or other optional ingredients. The fruit is prepared by the removal of pits, seeds, skins, and cores, where such removal is usual in preparing that kind of fruit for consumption as fresh fruit. The fruit may be screened, crushed, or otherwise comminuted. It may be acidulated. In the case of concentrated fruit or fruit juices, from which part of the water is removed, substances contributing flavor volatilized during water removal may be condensed and reincorporated in the concentrated fruit or fruit juice. In the case of citrus fruits, the whole fruit, including the peel but excluding the seeds, may be used. In the case of citrus juice or concentrated citrus juices, cold-pressed citrus oil may be added thereto in an amount not exceeding that which would have been obtained if the whole fruit had been used. The quantity of fruit ingredients used is such that, in relation to the weight of the finished sherbet, the weight of fruit or fruit juice, (including water necessary to reconstitute partially or wholly dried fruits or fruit juices to their original moisture content), is not less than two per cent in the case of citrus sherbets, six per cent in the case of berry sherbets, and ten per cent in the case of sherbets prepared with other fruits. For the purpose of this paragraph, tomatoes and rhubarb are considered as kinds of fruit.

(e) The optional nonfruit characterizing ingredients referred to in §11-30-5(a) include but are not limited to the following:

(1) Ground spice or infusion of coffee or tea.

(2) Chocolate or cocoa, including syrup.

(3) Confectionery.

(4) Distilled alcoholic beverage, including liqueurs or wine, in an amount not to exceed that required for flavoring the sherbet.

(5) Any natural or artificial food flavoring (except any having a characteristic fruit or fruit-like flavor)

(f) The name of each sherbet is as follows:

(1) The name of each fruit sherbet is "_____ sherbet," the blank filled in with the common name of the fruit or fruits from which the fruit ingredients used are obtained. When the names of two or more fruits are included, such names shall be arranged in order of predominance in accordance to weight.

(2) The name of each nonfruit sherbet is "sherbet," the blank filled in with the common or usual name or names of the characterizing flavor or flavors. If the characterizing flavor used is vanilla, the name of the food is "_____sherbet," the blank filled in as specified by §11-30-3(e)(2) relating to natural vanilla flavor, and §11-30-3(e)(5)(A) relating to artificial vanilla flavor.

(3) When the optional ingredients, artificial flavoring, or artificial coloring are used in sherbet, they shall be described on the label as follows:

(A) If the flavoring ingredient or ingredients consist exclusively of artificial flavoring, the label designation shall be "artificially flavored."

(B) If the flavoring ingredients are a combination of natural and artificial flavors, the label designation shall be "artificial and natural flavoring added."

(C) The label shall designate artificial coloring by the statement "artificially colored," "artificial coloring added," "with added artificial coloring," or "_____, an artificial color added," the blank filled in with the name of the artificial coloring used.

(g) Wherever there appears on the label any representation as to the characterizing flavor or flavors of the product and such flavor or flavors consist in whole or in part of artificial flavoring, the statement required by §11-30-5(f)(3)(A) and (B) as appropriate, shall immediately and conspicuously precede or follow such representation, without intervening written, printed, or graphic matter (except that the word "sherbet" may intervene) in a size reasonably related to the prominence of the name of the characterizing flavor. In any event, the size of the type shall not be less than six-point on packages containing less than one pint; not less than eight-point on packages containing at least one pint but less than one-half gallon; not less than ten-point on packages containing at least one-half gallon but less than one gallon; and not less than twelve-point on packages containing one gallon or over.

(h) Except as specified in §11-30-5(g), the statements required by §11-30-5(f)(3) shall be set forth on the principal display panel or panels of the label with such prominence and conspicuousness as to render them likely to be read and understood by the consumer under customary conditions of purchase and use.

(i) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of 21 C.F.R. Part 101. [Eff. Oct 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§321-11, 328-6, 328-8, 328-10, 328-19.1)

§11-30-6 Water ices.

(a) Water ices are foods prepared from the same ingredients and in the same manner as prescribed in §11-30-5 relating to sherbets, except that the mix need not be pasteurized. Water ices must comply with all the provisions of §11-30-5 (including the requirements for label statement of optional ingredients) except that no milk, or milk-derived ingredient, and no egg ingredient, other than egg white, may be used.

(b) The name of the product is "_____ ice," the blank being filled in, in the same manner as specified in §11-30-5(f)(1) and (2) as appropriate. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§321-11, 328-6, 328-10, 328-19.1)

§11-30-7 Quiescent frozen confections.

(a) Quiescent frozen confections are products prepared by freezing, without stirring or agitation, a mix which complies with all the provisions of §11-30-6 (including the requirements for label statement of optional ingredients) except:

(1) Optional dairy ingredients as specified in §11-30-5(b) may be added. When optional dairy ingredients are added, the mix shall be pasteurized.

(2) Any natural or artificial food flavoring may be added.

(3) Not less than seventeen per cent by weight of the product consists of total food solids.

(4) Any processing shall not increase the volume of the product by more than ten per cent.

(5) This product must be manufactured in the form of servings, individually packaged, properly labeled, and purveyed to the consumer in its original factory-filled package.

(b) The name of the product is "quiescent frozen confection." [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§321-11, 328-6, 328-8, 328-10, 328-19.1)

§11-30-8 Shave ice, ice shave or shaved ice.

These products are made from ice which has been shaved, ground, or otherwise comminuted and to which safe and suitable ingredients may be added. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§321-11, 328-6, 328-8, 328-10, 328-19.1)

§11-30-9 Frozen yogurts.

(a) Frozen yogurt, low fat frozen yogurt and nonfat frozen yogurt are frozen desserts. Frozen yogurt shall contain not less than 3.25 per cent milkfat. However, when frozen yogurt is made with fruit ingredient(s), the milkfat content of the frozen yogurt may be reduced to not less than 2.6 per cent.

Lowfat frozen yogurt shall contain at least 0.5 per cent but not more than two per cent milkfat. Nonfat frozen yogurt shall contain less than 0.5 per cent milkfat.

(b) When frozen yogurt is sold at a retail outlet to a consumer in anything other than the original packages properly labeled and designed for use by the ultimate consumer, the owner-operator or manager of such retail establishment shall notify the purchaser by conspicuous signs or on menu cards that frozen yogurt is being served. However, this notice is not required when it is clear by a trade name that frozen yogurt is being served.

(c) Frozen yogurt shall conform to the coliform standards for frozen desserts prescribed by §11-30-16. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§321-11, 328-6, 328-8, 328-10, 328-19.1)

§11-30-10 Imitation frozen desserts.

(a) Imitation frozen desserts are prepared from the same ingredients and in the same manner as ice cream, frozen custard, ice milk, sherbet, or frozen yogurt, and comply with all of the provisions for such products (including the label requirements for the statement of optional ingredients) except that the fat is not milkfat.

(b) The name of the product is "_____imitation," the blank filled in with the name of the product as provided in §11-30-3 (ice cream, frozen custard), §11-30-4 (ice milk), §11-30-5 (sherbet), or §11-30-9 (frozen yogurt). [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§321-11, 328-6, 328-8, 328-10, 328-19.1)

§11-30-11 Non-conforming frozen desserts made in semblance of sherbet.

(a) These products are prepared from the same ingredients and in the same manner prescribed in §11-30-5 relating to sherbets and comply with all of the provisions of §11-30-5 (including the requirements for label statement of optional ingredients) except:

(1) The milkfat content is less than two per cent.

(2) The titratable acidity of the product, calculated as lactic acid, is less than 0.35 per cent.

(3) The product weighs not less than 4.5 pounds per gallon.

(4) Artificial flavoring having a characteristic fruit or fruit-like flavor may be used as an ingredient.

(b) The name of the non-conforming frozen dessert is "_____ frozen dessert," the blank filled in by a trade name or a name that adequately describes the product without being misleading. The words "frozen dessert" shall be in letters no less than one-half the size and prominence to such trade name or descriptive name. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§321-11, 328-6, 328-8, 328-10, 328-19.1)

§11-30-12 Mix.

(a) Fluid mix is the fluid unfrozen combination of all ingredients of a frozen dessert with or without fruits, fruit juices, candy, nut meats, flavor, or harmless color.

(b) Powdered mix is the dry unfrozen combination of all ingredients of a frozen dessert with or without fruits, fruit juices, candy, nut meats, flavor or harmless color, in a powdered form which when added to potable water becomes a fluid mix.

(c) Paste mix is the wet unfrozen combination of all ingredients of a frozen dessert with or without fruits, fruit juices, candy, nut meats, flavor, or harmless color, in a paste form which with potable water added becomes a fluid mix. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§321-11, 328-6, 328-8, 328-10, 328-19.1)

§11-30-13 Frozen sweet cream.

(a) Frozen sweet cream for manufacture is the pasteurized, sweet, fatty liquid or semi-liquid separated from milk, with or without the addition of milk or skim milk. It contains not less than 43.0 per cent of milkfat. It shall be used only in the manufacture of frozen desserts.

(b) Containers of frozen sweet cream shall be conspicuously labeled "frozen sweet cream for manufacture only," in addition to bearing other mandatory information. Such labeling shall remain affixed to containers of frozen sweet cream until the frozen sweet cream has been removed from such containers at the time of manufacture into a frozen dessert.

(c) Records of the amounts of frozen sweet cream received at a frozen dessert plant and of the amounts of such frozen sweet cream utilized in the manufacture of frozen desserts shall be kept and maintained by a frozen dessert manufacturer for a period of at least two years. The records shall be subject to inspection at reasonable times by the director. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§321-11, 328-6, 328-8, 328-10, 328-19.1)

§11-30-14 Adulterated or misbranded frozen desserts or mix.

(a) The provisions of §328-9, HRS, (pertaining to adulterated foods) and §328-10, HRS, (pertaining to misbranded foods), shall apply to frozen desserts.

(b) No person shall manufacture, freeze, sell, offer or expose for sale, or have in possession with intent to sell, any mix or frozen dessert which is adulterated or misbranded.

(c) Retail establishments selling imitation or non-dairy frozen desserts in place of frozen desserts made with milkfat shall notify the consumer by either proper labeling or conspicuous posted signs or conspicuous notices on menu cards and advertisements informing of such substitution. Failure to comply with this requirement may cause these products to be misbranded. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-21) (Imp: HRS §§321-11, 328-3, 328-6, 328-9, 328-10, 328-13)

§11-30-15 Permits, hearings, notices and suspensions.

(a) It shall be unlawful for any person to deliver into or receive into the state for sale, or to produce for sale or to sell or offer for sale therein, or to have in storage where mix or frozen desserts are sold or served, any mix, frozen desserts, or frozen sweet cream, if such person does not hold a permit from the director. However, no permit shall be required of:

(1) Persons receiving, storing, selling, or offering for sale any frozen desserts, powdered, or paste mixes in original packages properly labeled and designed for use by the ultimate consumer or of retailers who are not also manufacturers of frozen desserts.

(2) A person engaging in the manufacture of any non-dairy frozen dessert containing no vegetable or animal protein if such person complies with the provisions of Administrative Rules 11-12, entitled "Food Service and Food Establishment Sanitary Code." This exemption does not preclude such person from conforming to other requirements for non-dairy frozen desserts established by this chapter. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit.

(b) A person may obtain a permit by making written application to the director on a form prescribed by the director for the permit; provided that such person complies with the provisions of Administrative Rules 11-12, entitled "Food Service and Food Establishment Sanitary Code." Each frozen dessert manufacturer is required to list on the frozen dessert permit application, the source of the frozen dessert mix and the class(es) of frozen dessert(s) being manufactured. If the frozen dessert manufacturer also manufactures the mix, the mix must be manufactured according to the provisions of §11-30-17(p). Upon receipt of such an application, the director shall make an inspection of the establishment to determine compliance with the provisions of this chapter. When inspection reveals that the applicable requirements have been met, a permit shall be issued to the applicant by the director. Permits shall be conspicuously posted at the permit holder's place of business. Permits shall not be transferable from one person to another person or place. Permits shall expire on June 30 of each year and an application to renew the permit shall be made prior to this date. Permits shall be renewed provided the following conditions are met:

(1) The establishment's current permit is not under suspension.

(2) A notice of intent to suspend the establishment's permit is not in effect.

(3) The director has been able to collect the number of samples required by §11-30-16(b).

(4) The most recent laboratory determinations performed by the department of the establishment's frozen desserts are in compliance with chemical, physical, and biological standards provided for in this chapter.

(5) The establishment complies with the provisions of Administrative Rules 11-12, entitled "Food Service and Food Establishment Sanitary Code."

(c) Permits may be suspended temporarily by the director for failure of the holder to comply with the requirements of this chapter. Whenever a permit holder has failed to comply with any notice issued under §11-30-15, the permit holder shall be notified in writing that the permit is, upon service of the notice, immediately suspended, and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the director by the permit holder, within five days of such notification.

(d) Whenever the director finds unsanitary or other conditions in the operation of an establishment which, in his judgment, constitute a substantial hazard to the public health, he may without warning, notice, or hearing, issue a written notice to the permit holder citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken. If necessary, the notice shall state that the permit is immediately suspended, and all operations are to be immediately discontinued. Any person to whom such a notification is issued shall comply immediately therewith, but shall be afforded a hearing as soon as possible if a written request for a hearing is filed with the director, within five days of such notification.

(e) Whenever a permit is suspended, the director may either remove the permit from the establishment, or require that the notice to suspend the permit be posted with the permit at the establishment.

(f) In lieu of a hearing, any person whose permit has been suspended may, within a five days period, make application for a reinspection for the purpose of reinstatement of the permit. Within ten days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the director shall make a reinspection. If the applicant is complying with the requirements of this chapter, the permit shall be reinstated.

(g) A permit may be revoked for:

(1) Serious or repeated violations of any of the requirements of this chapter.

(2) Failure to request for a hearing or reinspection as provided by §11-30-15.

(3) Interference with the director in the performance of his duties. Prior to such action, the director shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of five days following such notification, unless a request for a hearing is filed with the director by the permit holder, within the five-day period. A permit may be suspended for cause pending its revocation or a hearing relative thereto.

(h) The hearings provided for in §11-30-15 shall be conducted by the director at a time and place designated by him. Based upon the record of such hearing, the director shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the director.

(i) Whenever the director makes an inspection of an establishment and discovers that requirements of this chapter have been violated, he shall notify the permit holder of the violations by means of a written notice wherein he shall set forth the specific violations found and establish a specific and reasonable period of time for the correction of the violations. Relative to violations of bacteriological standards for mix and frozen desserts, whenever two of the last four bacterial counts or coliform determinations, taken on separate days, exceed the bacterial or coliform limit of the mix or frozen dessert, the director shall send a written notice thereof to the permit holder; provided that:

(1) Violations of the bacterial limits shall be counted separately from violations of the coliform limits. When the establishment manufactures more than one class of frozen dessert, violations of the bacterial or coliform limits of each class shall be counted separately.

(2) When bacterial counts are made of several samples of the same class of frozen dessert from the same retail establishment on the same day, these counts shall be averaged arithmetically, and the results used to determine compliance with the bacterial standard for frozen desserts. This provision shall also apply to coliform determinations. This notice shall be in effect so long as two of the last four samples exceed the limit of the standard. An additional sample shall be taken within fourteen days of such notification, but not before the lapse of three days. Immediate suspension of the permit in accordance with §11-30-15 and court action may be instituted whenever the standard is violated by three of the last five bacterial counts or coliform determinations; provided that when an establishment manufactures more than one class of frozen dessert, the permit shall be

suspended for only the class of frozen dessert which violates the standard by three of the last five bacterial counts or coliform determinations. When a suspended permit is reinstated according to the provisions of §11-30-15, the counting of the violations of the bacterial or coliform limits shall begin anew. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-21, 328-22, 328-23, 328-25) (Imp: HRS §§321-11, 328-6, 328-9, 328-22, 328-23, 328-24, 328-25)

§11-30-16 Bacterial and coliform standards and sampling.

(a) The bacterial plate count and coliform Bacteria count of frozen desserts shall at no time prior to delivery to the buyer or consumer exceed fifty thousand bacteria per gram and twenty coliform per gram respectively. The bacterial plate and coliform counts of the pasteurized fluid mix, or fluid mix prepared from powdered mix or paste mix, shall at no time prior to being manufactured into frozen desserts or sale exceed fifty thousand bacteria per gram and twenty coliform bacteria per gram respectively.

(b) Samples of frozen desserts or mixes from retail stores, food service establishments, grocery stores, permit holders, and other places where mixes and frozen desserts are sold shall be examined periodically as determined by the director, and the results of the examination shall be used to determine compliance with the requirements of this chapter. Samples of all frozen desserts made with optional dairy ingredients or animal or vegetable protein and manufactured with a counter freezer in a retail establishment shall be examined by the director at least twice annually with the interval between sampling dates not to exceed six months; provided that mobile frozen dessert vendors shall be sampled at least once every four months.

(c) Required bacterial counts, coliform determinations, phosphatase, and other laboratory checks shall be performed on pasteurized mixes and frozen desserts. All of these tests and checks are to be performed by the director.

(d) Whenever a phosphatase test is positive, the cause shall be determined by the director. When the cause is improper pasteurization, it shall be corrected and any frozen dessert or mix involved shall not be offered for sale.

(e) All sampling procedures and required laboratory examinations shall be in compliance with the 12th Edition, 1975, of the "Official Methods of Analysis of the Association of Official Analytical Chemists," a publication of the Association of Official Analytical Chemists, Inc., or the 14th Edition, 1978, of the "Standard Methods for Examination of Dairy Products," a publication of the American Public Health Association, Inc.

(f) Examination and tests shall be conducted to detect adulterants as the director shall require. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-21, 328-23, 328-25) (Imp: HRS §§321-11, 328-6, 328-8, 328-9, 328-22, 328-23, 328-24, 328-25)

§11-30-17 Sanitation requirements for frozen desserts plants.

(a) The floors of all rooms in which mix, frozen desserts, or their ingredients are manufactured, frozen, or stored, or in which containers and utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material. The floors shall be smooth, properly drained, provided with trapped drains, and kept clean. Drains from refrigeration or cold storage rooms shall not be

connected directly to any sewer, house drain, soil or waste pipe. The construction requirements of §11-30-17(a) shall be waived in plants which freeze and only sell at retail on the premises. However, the portion of the room in which the freezer is installed and the room in which containers or utensils are washed must have impervious floors or solid floors covered with tight linoleum or other approved, washable material.

(b) Walls and ceilings of rooms in which mix, frozen desserts, or their ingredients are manufactured or frozen, or in which containers or utensils are washed, shall have a smooth, washable, light-colored surface, and shall be kept clean.

(c) All openings to the outer air shall be effectively screened and doors shall be self-closing.

(d) All rooms shall be well lighted and ventilated.

(e) The various plant operations shall be so located and constructed as to prevent any contamination of mix, frozen desserts, or their ingredients, cleaned equipment, or containers. All means necessary for the elimination of files shall be used. Containers of frozen dessert ingredients shall not be unloaded directly into the room or rooms used for pasteurization or subsequent processes. Pasteurized mix or frozen desserts shall not be permitted to come in contact with equipment with which unpasteurized mix, frozen desserts, milk, or milk products have been in contact, unless such equipment has first been thoroughly cleaned and subjected to a sanitizing process. None of the operations connected with frozen desserts plants shall be conducted in a room used for domestic purposes or immediately adjoining and connecting with any such room.

(f) There shall be provided toilet facilities which conform with the rules of the department. The toilet facilities shall be kept clean, well-ventilated, and in good repair. Toilet rooms shall not open directly into any room in which frozen desserts or their ingredients, equipment or containers are handled or stored. The doors of all toilet rooms shall be self-closing.

(g) The water supply shall be easily accessible, adequate, and of a safe, sanitary quality. There shall also be an adequate and easily accessible supply of running hot water.

(h) Convenient hand-washing facilities shall be provided, including warm running water, soap, and approved sanitary towels. The use of a common towel is prohibited. No employee shall resume work after using the toilet room without first washing his hands.

(i) All sanitary piping, fittings, and connections which are exposed to mix or frozen desserts shall consist of smooth, impervious, corrosion-resistant, non-toxic, easily cleanable material. All piping shall be in good repair. Mix or frozen desserts shall be conducted from one piece of equipment to another only through sanitary piping.

(j) All multi-use containers and equipment with which mix, frozen desserts, or their ingredients come in contact shall be constructed in such manner as to be easily cleaned and shall be kept in good repair.

(k) All wastes shall be properly disposed of.

(l) All multi-service containers and equipment for mix, frozen desserts, or their ingredients, shall be thoroughly cleaned after each usage. All containers and equipment shall be sanitized immediately before each usage. When empty and before being returned by a frozen desserts plant, each milk and milk products container shall be effectively cleaned and sanitized.

(m) After sanitization, all multi-use containers and equipment for mix, frozen desserts, and their ingredients shall be stored in such manner as to be protected from contamination.

(n) Between sanitization and usage, and during usage, containers and equipment shall not be handled or operated in such manner as to permit contamination of the frozen desserts mix or their ingredients.

(o) Caps, parchment papers, wrappers, can liners, and single-service sticks, spoons, and containers for frozen desserts, mix, or their ingredients shall be purchased and stored only in sanitary containers, shall be kept therein in a clean dry place, and shall be handled in a sanitary manner.

(p) The entire mix, including all ingredients used in preparing frozen desserts, which may be in semblance of ice cream, except such fruits, nuts, flavors, and other ingredients, as may be exempt by the director because of the deleterious effect of pasteurization, shall be pasteurized as described in §11-30-2, provided that:

(1) A fluid mix prepared from powder or paste mix may be used without pasteurization provided the powder or paste mix is packed in a hermetically sealed container, the contents of which, when opened, are promptly mixed with potable water and frozen while being stirred, and that under no circumstances shall the resulting fluid mix, or any portion of the powder or paste mix, be allowed to stand before freezing for more than one hour.

(2) Whenever any provision of §11-30-17(p)(1) is not met, the fluid mix resulting from mixing a powder or paste mix with potable water shall be heated to a boiling state and maintained in such state for at least fifteen minutes. The resulting fluid mix and any remaining powder or paste mix shall be stored under refrigeration at a temperature of 45°F or below in a sanitary manner to preclude contamination, or by a method approved by the department. Furthermore, the resulting fluid mix shall be stored at a temperature of 45°F or below for no longer than twenty-four hours before freezing.

(q) All milk and fluid milk products received at the frozen desserts plant for use in frozen desserts or mix shall immediately be cooled in approved equipment to 50°F or less and maintained at that temperature until pasteurized, unless they are to be pasteurized within two hours after receipt. All pasteurized mix shall immediately be cooled in approved equipment to a temperature of 45°F or less and maintained thereat until frozen. All mix which is not frozen at the plant at which it was pasteurized shall be transported to the place of manufacturing or freezing in sealed containers, and the mix shall be handled in a sanitary manner and maintained at a temperature of 45°F or below. Dipping from containers of pasteurized mix is prohibited.

(r) Packaging, cutting, molding, dipping, freezing, hardening, and other preparation of mix or frozen desserts or their ingredients shall be done in an approved manner. Containers shall be adequately covered immediately after filling, with the exception of counter freezers wherein frozen desserts are drawn directly from the freezer into a sanitary single-service container for immediate consumption. This exception will be allowed only when the dispensing area complies with the provisions of §11-30-17(e). Caps or covers shall be handled in such manner as to prevent contamination of the package contents.

(s) Product drip or overflow or spilled mix of frozen desserts, or their ingredients, shall not be sold for human consumption.

(t) Mix or frozen desserts in broken and open containers may, after delivery, be returned to the plant for inspection, but shall not be used for making mix or frozen desserts.

(u) No person affected with any disease in a communicable form, or while a carrier of such disease, shall work at any frozen desserts plant in any capacity which brings him into contact with the manufacturing, processing, freezing, handling, storage, or transportation of any mix or frozen desserts or which brings him into contact with any containers, utensils, and equipment. No frozen desserts plant operator shall employ in any such capacity any such person or any person suspected of having any

disease in a communicable form, or of being a carrier of such disease. Any manufacturer or distributor of frozen desserts in whose plant any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of such disease, shall notify the director immediately. When suspicion arises as to the possibility of transmission of infection from any person concerned with the handling of mix, frozen desserts, or their ingredients, the department is authorized to require any or all of the following measures:

- (1) The immediate exclusion of that person from handling mix, frozen desserts, or their ingredients.
 - (2) The immediate exclusion of the supply concerned from distribution and use.
 - (3) Adequate medical and bacteriological examination of the person, of his associates, and of his and their body discharges. The provisions of §11-30-17(u) shall apply to only those communicable diseases which may be transmitted by food or food ingredients.
- (v) All persons coming in contact with mix, frozen desserts or their ingredients, containers, or equipment, shall wear clean outer garments and shall keep their hands clean at all times while thus engaged.
- (w) All vehicles used for the transportation of fluid mix or frozen desserts or their ingredients shall be so constructed and operated as to protect their contents from the sun and from contamination. Such vehicles shall be kept clean, and no substance capable of contaminating mix or frozen desserts or their ingredients shall be transported therewith in such manner as to permit contamination. All vehicles used for the distribution of fluid mix or frozen desserts shall have the name of the distributor prominently displayed.
- (x) The immediate surroundings of all frozen desserts plants shall be kept in a neat, clean condition. All frozen desserts plants which are hereafter constructed, reconstructed, or extensively altered, shall conform in their construction to the requirements of this chapter. Properly prepared plans for all frozen desserts plants which are hereafter constructed, reconstructed, or extensively altered, shall be submitted for approval before work is begun and signed approval shall be obtained from the department. [Eff. Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, (Imp: HRS §§321-11, 328-6, 328-9)

§11-30-18 Storage, transfer, dispensing.

- (a) The cabinet compartment or package receptacles containing frozen desserts shall be used in a manner which precludes contamination or adulteration of the frozen desserts.
- (b) No person shall transfer frozen desserts from one container to another, or package the same, on the street or in any vehicle, except in vehicles approved by the department, or in any place except a sanitary room under approved conditions.
- (c) Utensils and devices used in dispensing frozen desserts shall be kept clean, and water in which they are kept when not in use shall be clean. Such dispensing utensils and devices shall be kept in running water when it is piped to the building in which frozen desserts are sold. Running water does not mean water collected from roofs even where such is the only supply available.
- (d) Only frozen desserts in package form shall be dispensed from places where suitable facilities for washing utensils are not available. [Eff: Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-21) (Imp: HRS §§321-11, 328-6, 328-9)

§11-30-19 Penalty.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500 or by imprisonment for not more than one year or both, as provided in §321-18, HRS. Each and every violation of the provisions of this chapter shall constitute a separate offense. [Eff: Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-22) (Imp: HRS §§321-18, 328-22, 328-29)

§11-30-20 Severability.

If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff: Oct. 2, 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-21) (Imp: HRS §§321-9, 321-10, 321-11, 328-21)